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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 82

JOHN H. CRINER AND MARY E. CRINER,
Petitioners,

vs.

V. S. FARHAM, R. G. LAWTON, T. W. LEE, E. W. BURNETT AND CHRYSTELLE PARTEE,
Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITIONERS' PETITION FOR WRIT OF CERTIORARI AND TO THEIR BRIEF IN SUPPORT THEREOF

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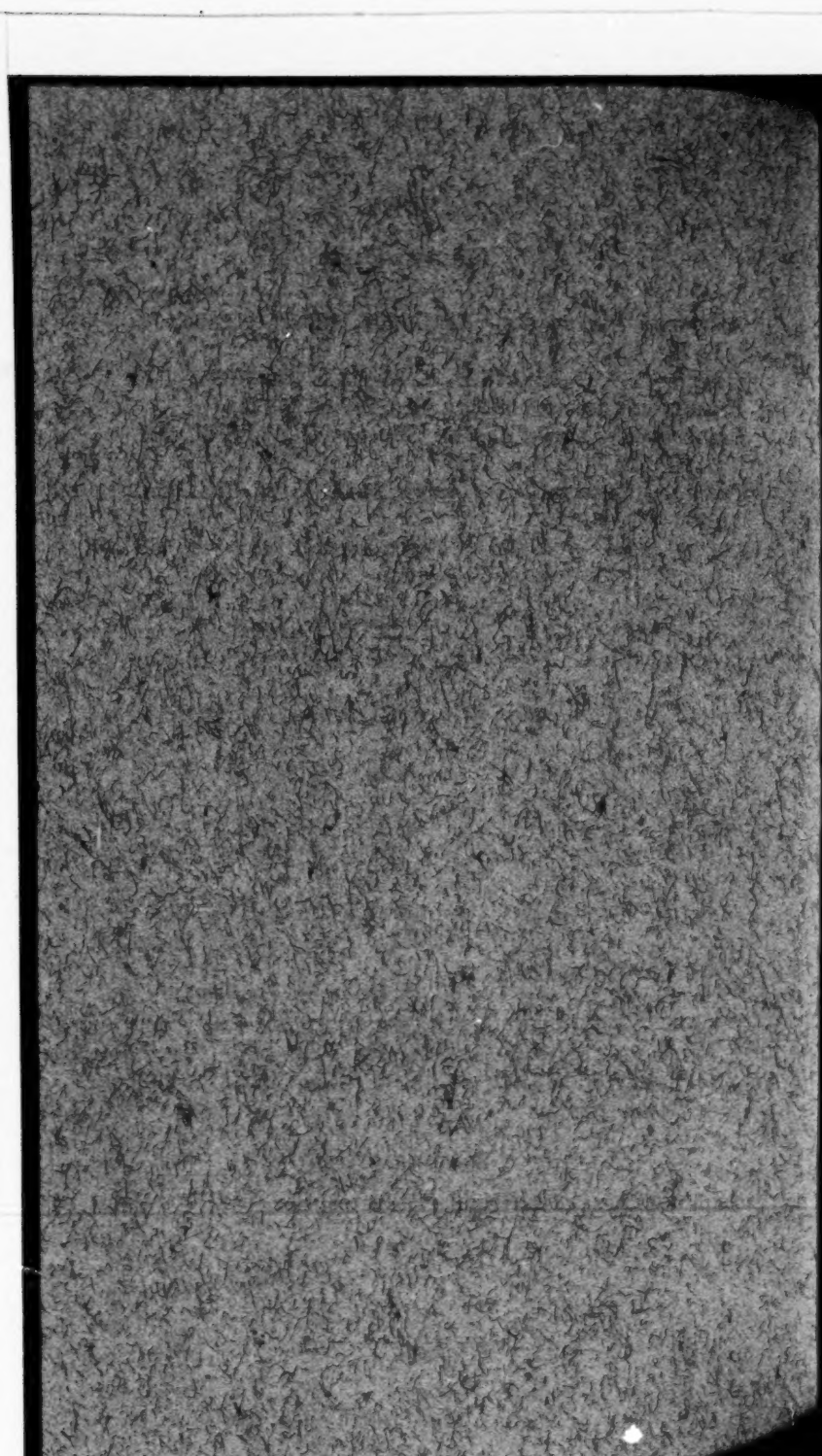

INDEX

Table of Cases

Statutes Cited

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 82

JOHN H. CRINER AND MARY E. CRINER,
Petitioners,

vs.

V. S. PARHAM, R. G. LAWTON, T. W. LEE, R. W. BURNETT AND CHRYSTELLE PARTEE,
Respondents

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITIONERS' PETITION FOR WRIT OF CERTIORARI AND TO THEIR BRIEF IN SUPPORT THEREOF

Petitioners herein seek a Writ of Certiorari to the Supreme Court of Arkansas to obtain review of a judgment of that court affirming the decree of the Chancery Court of Ouachita County, Arkansas. Both of said courts held that Petitioners had acquired good title under and by virtue of a lost deed, and the Seven Year Statute of Limitations, to the land in question and one-half of the oil, gas, and other minerals therein and thereunder, and that Respondents, as

innocent purchasers for value, were the owners of one-half of the oil, gas, and other minerals.

Petitioners' petition must be denied because no federal question is presented herein, and even if any federal question is presented, the same was not timely and properly raised in the court below. Before discussing the jurisdiction of this Court, and Petitioners' contentions herein, we will for the sake of clarity make a statement of the facts.

By royalty deed dated September 6, 1945, V. S. Parham, one of the Respondents, purchased from the heirs of George L. Ritchie, Plaintiffs in the lower state court, who were the record owners of the fee, an undivided one-half interest in the oil, gas and minerals under 80 acres of land in Ouachita County, Arkansas, approximately 60 acres of which was involved in this suit.

This litigation commenced on November 6, 1945, when the heirs of George L. Ritchie filed suit against John Criner, Mary E. Criner, his wife, E. E. Scott and H. Andrews, the purpose of which suit was to cancel an oil and gas lease and mineral deed executed by John H. Criner and wife, Mary Criner, on February 1, 1939, unto E. E. Scott and H. Andrews, which instruments were filed for record February 13, 1939, and which covered only the SW¼ of the SW¼ of Section 19, Township 15 South, Range 18 West, Ouachita County, Arkansas. The prayer of the complaint was that said instruments be cancelled and that the title to said forty acres be quieted and confirmed in the plaintiffs as against the defendants. The defendants, John H. Criner and Mary E. Criner, filed an answer on January 17, 1946, an amendment to answer on January 18, 1946, and then finally an amended and substituted answer. In substance, the defendants in the lower state court alleged that in the year 1894, John Criner had acquired a deed executed and delivered to him by George L. Ritchie covering the SW¼ of the SW¼ of Section 19, Township 15 South, Range 18

West, which deed was destroyed by rats without having been recorded. They also alleged that they had been in possession of the sixty acres involved in this suit for approximately fifty years, that the same had been completely under fence and that during the whole of said period they were claiming same as their own.

V. S. Parham and his grantees, R. G. Lawton, T. W. Lee, R. W. Burnett and Chrystelle Partee, filed their intervention on May 15, 1946, in which they adopted the complaint of the plaintiffs and alleged that V. S. Parham purchased an undivided one-half mineral and royalty interest from the plaintiffs in good faith and for value, without notice, either actual or constructive, of any claim or interest therein that John Criner or Mary Criner had.

It might be well to state that the consideration for the execution of the mineral deed and oil and gas lease to Scott and Andrews was their agreement to perfect title to the forty acres in question in John Criner. The consideration failed and the two instruments were cancelled by a Chancery Decree rendered prior to the trial of this case.

In the lower state court, a court of equity, the case was tried, of course, without a jury and the Chancellor found in favor of the defendants, John and Mary Criner, as against the Ritchie heirs, and quieted and confirmed the title of the Criners to the land, together with one-half of the minerals. The Chancellor further held that V. S. Parham was an innocent purchaser for value and quieted and confirmed title in him and his grantees to an undivided one-half mineral interest (R. 150). From the decision of the Chancellor, both the Ritchie heirs, the plaintiffs therein, and the Criners, the defendants therein, appealed to the Supreme Court of Arkansas. Said court in all things affirmed the decision of the lower court (R. 258). Both the Ritchie heirs (R. 263) and the Criners (R. 265) filed petitions for rehearing. It was in this petition for rehearing that Petitioners

for the first time sought to bring up a federal question. The Supreme Court of Arkansas denied both petitions for rehearing (R. 269) and Petitioners herein now seek a Writ of Certiorari.

Around September 3, 1945, V. S. Parham entered into negotiations with Jack Ritchie, one of the heirs of George L. Ritchie, to purchase a one-half royalty interest under the SW¼ of the SW¼ of Section 19, Township 15 South, Range 18 West, and the NW¼ of the NW¼ of Section 30, Township 15 South, Range 18 West, Ouachita County, Arkansas, containing eighty acres, more or less (R. 128). Parham contacted Mr. Thomas Gaughan, an attorney at law at Camden, who informed him that he had examined the title to the land in question in December, 1937, at which time he approved for Tide Water and Seaboard Oil Company the title to an oil and gas lease executed by the heirs of George L. Ritchie. Mr. Gaughan informed Parham that at that time he had procured an affidavit of disclaimer from an old negro man named John Criner, who was in the actual possession of the land (R. 142). In this disclaimer, which was dated March 18, 1938, John Criner stated under oath that he was living on the land involved in this law suit, but that he rented same from the heirs of George L. Ritchie and that he claimed no interest in said land other than as a tenant (R. 156).

V. S. Parham, accompanied by Smead Stuart, neither of whom is a lawyer or an abstracter, then ran the deed records of Ouachita County, Arkansas. They found that there was a deed into George L. Ritchie covering this land executed in 1894, but that there was no deed out of him (R. 129). An abstracter furnished a tax certificate which showed that the Ritchie heirs paid the taxes on this land for the ten preceding years. While the transaction for the royalty was still pending V. S. Parham, accompanied by

Smead Stuart, went out to the land in question. Not being certain of its location, Parham testified that he went upon a tract of land and asked an old negro man who owned the land upon which he was standing. The negro very readily replied that it was the property of the Ritchie heirs (R. 129), and that he rented from them (R. 136). Parham further testified that he showed the negro, who stated that his name was John Criner, a map of that area of Ouachita County, Arkansas, and that through questioning Criner as to the adjoining land owners, he definitely established that the land was that under which he proposed to purchase royalty (R. 129).

Parham further testified he stated to John Criner that he would like to have a disclaimer for his files, that Criner agreed to execute such a document if Parham could assure him he might live there as long as he desired, providing Parham would pay him $50.00; that after this first conversation with Criner, Parham returned to Magnolia and, relying on the opinion of Thomas Gaughan, the record, the affidavit of disclaimer signed by John Criner and the verbal representations of Criner, instructed his bank to pay the draft drawn on him by Thomas Gaughan for the purchase price of the royalty (R. 130). That night Parham called Jack Ritchie by telephone and got Ritchie's assurance that Criner might live on the land as long as Criner desired; but when Parham returned the next day with the desired assurance, Criner refused to sign either a quitclaim deed or a disclaimer, giving as his reason the fact that his wife and his son did not want him to (R. 134). The royalty deed was dated September 6, 1945. Parham testified that he would have refused to pay the draft and would not have purchased the royalty if John Criner had told him that he was asserting any claim to the land (R. 137).

The testimony of Parham was corroborated by Smead

Stuart, who, from the record, appears to be a disinterested witness (R. 140-141).

The testimony of John Criner is in direct conflict with that of Parham in almost every respect (R. 144). His testimony with reference to what transpired in his two conversations with Parham was corroborated in almost every respect by the testimony of Mary Criner, his wife (R. 146).

Petitioners assign as error the holding of the Supreme Court of Arkansas, to the effect that it was between his two trips to John Criner's house that he, Parham, authorized his bank to honor a draft drawn on him in payment for the royalty, if and when the draft was presented for payment. Now, Parham talked with Criner on two successive days. On the occasion of the first visit Criner stated that the Ritchies owned the land (R. 129) and that he rented from them (R. 136). He agreed to sign a disclaimer provided Parham could give him assurance the Ritchies would permit him to continue to reside on the land. A careful reading of Parham's testimony at pages 129 and 130 of the transcript of the record herein shows it was after this first conversation that Parham returned to Magnolia and authorized his bank to honor the draft for the purchase price of the royalty. Petitioners, however, argue that it was after the second conversation when Criner refused to sign a disclaimer that Parham returned home and told his banker to honor the draft. With this view of the evidence we most certainly do not agree and neither did the Supreme Court of Arkansas. The testimony of Parham extends from page 128 to page 137 of the transcript. No mention was made by Parham of a second conversation with Criner until page 133 of the transcript is reached. At pages 129 and 130 Parham is relating what occurred on his first visit. As it was not until several pages later on

in the transcript that any reference was made to a second visit, it logically follows that Parham's statement, "After leaving there I went home and instructed the bank to pay the draft" (R. 130) refers to the first visit. This must be the correct view for up until that time in his testimony Parham had referred only to the conversation that took place his first visit.

At the conclusion of his testimony relating to the second visit, and after stating that Criner would not sign, Parham added, "That is all I did about it" (R. 134). Construing the word "it" to mean "transaction," and it is submitted that from the context the word could refer to nothing else, Parham meant that from and after that moment (the second visit) he did nothing else in regard to the royalty transaction.

It is obvious from the foregoing that there is an abundance of testimony in the record to support the holding of both of the state courts that V. S. Parham and his grantees, Respondents herein, were innocent purchasers for value without notice and therefore entitled to protection. Pope's Digest of Arkansas Statutes Section 1847; *White* v. *Moffett*, 108 Ark. 490, 158 S. W. 505.

Petitioners argue that V. S. Parham did not rely upon the disclaimer and state the fact that Parham sought out Criner and talked with him about the character of Criner's possession, is proof that there was no reliance. Parham had been informed that John Criner was in possession of this land. The Arkansas Supreme Court has often held that a purchaser must seek out an occupant to learn the nature of his claim, otherwise, the law makes him take notice thereof; *Brewer* v. *Yancey*, 169 Ark. 816, 277 S. W. 11; *Temple* v. *Tobias*, 186 Ark. 851, 56 S. W. (2d) 585. But seek out John Criner is precisely what Parham did.

It is submitted that under the circumstances, Parham made such inquiries as an ordinary prudent man would have made when faced with the fact that John Criner was in possession of the land. For the purpose of determining whether he was an innocent purchaser, Parham was certainly entitled to rely upon the affidavit of disclaimer (R. 156) signed by John Criner. Any reasonable man would attach some verity to it. But aside from the disclaimer, Parham went to Criner himself. Criner informed him that the land was owned by, and that he rented it from, the heirs of George Ritchie (R. 129 and R. 136). In effect, Criner confirmed the statements contained in the disclaimer he had made seven years previously. Parham then, after this first visit to Criner was justified in returning to Magnolia and authorizing his bank to honor the draft for the royalty. He was an innocent purchaser without notice and should be protected. In the words of the Chancellor, "They did everything they could" (R. 155) to ascertain the interest of Criner and to comply with the duty of inquiry thrust upon them by reason of Criner's possession.

The sixth, seventh and eighth Specification of Errors in Petitioners' brief are to the effect that the Supreme Court of Arkansas erred in holding that John H. and Mary E. Criner were estopped. Petitioners further state, on the assumption that John Criner was estopped, that Mary Criner neither signed nor said anything and that to hold her estopped amounted to a deprivation of rights guaranteed her under the homestead and dower statute of the State of Arkansas.

The answer to Petitioners' contention is that there was no such holding. The decision of neither the Ouachita Chancery Court nor the Supreme Court of Arkansas was based on the theory of estoppel. The word estoppel was not mentioned in the opinion of either of the state courts.

The opinion of the Chancellor (R. 150) clearly shows he granted Respondents the relief they prayed for on the theory of innocent purchaser under the Arkansas recording statute (Pope's Digest Section 1847) and the doctrine announced in the case of *White* v. *Moffett*, 108 Ark. 490, 158 S. W. 505. A careful reading of the opinion of the Chief Justice shows that the Supreme Court of Arkansas merely affirmed the decision of the lower court.

Even though Petitioners have misconstrued the holding of the state courts, it might be well to discuss for a moment the rights of homestead and dower. Under the theory advanced by Petitioners, one could never be held an innocent purchaser of a tract of land occupied by a married man, or to which a married man had an unrecorded deed, for to so hold one to be an innocent purchaser, would deprive the wife of her rights of dower and/or homestead. Such a theory is preposterous and unheard of for it would completely nullify all recording statutes. Furthermore, this court has held that it has no jurisdiction to review a decision by a state court where the only question involved is the conformity of a state statute with the state constitution. *Lepper* v. *Texas*, 139 U. S. 462, 35 L. Ed. 225.

In connection with the discussion of the homestead right, counsel for Petitioners cite two Arkansas cases (*Scoggin* v. *Hudgins*, 78 Ark. 531 and *Taylor* v. *Greene*, 186 Ark. 817) which they state are "the nearest approaches to an invasion of the homestead right that the Supreme Court of Arkansas has ever made". Counsel for Petitioners are certainly familiar with *Farmers Saving B. and L. Association* v. *Jones*, 68 Ark. 76, 56 S. W. 1062 and *Mason* v. *Dierks Lumber and Coal Company*, 94 Ark. 107, 1255 S. W. 656, for they were cited by Respondents when this case was argued in the Supreme Court of Arkansas. In the former case, it was held, quoting from the syllabus:

> "Where a defendant's sworn application for a loan on his lands stated that they were not his homestead, and that the loan would be made, if at all, with reliance on such statement, defendant was thereby estopped from denying an abandonment of the homestead on a foreclosure of the mortgage securing such loan, though his wife had not acknowledged, notwithstanding Act March 18, 1887, providing that no conveyance affecting the homestead shall be valid unless the wife joins in executing and acknowledging it, since such statute refers to the conveyance, and not the abandonment, of a homestead, which abandonment by the husband would be binding on the wife."

The Supreme Court of Arkansas held that the affidavit or sworn statement in writing was not a conveyance of the homestead and for that reason was not void because of nonjoinder by the wife. Thus, notwithstanding the homestead right asserted by Petitioners, it is obvious that the Supreme Court of Arkansas has subjected and can subject the homestead to a decree or judgment, even though the wife has neither signed nor said anything.

Petitioners next contend that the judgment of the state courts against them is arbitrary and capricious, that John H. and Mary Criner are Negroes and have been deprived of their property without due process of law and that there is no testimony in the record to sustain the holding of the courts. A careful reading of the Chancellor's opinion (R. 150), which was merely affirmed by the Supreme Court of Arkansas should be a sufficient answer to each of these contentions. Perhaps, however, it might be well to examine further each contention.

Contrary to the facts of *Saunders* v. *Shaw*, 244 U. S. 317, 61 L. Ed. 1163 cited by Petitioners, the testimony of John H. and Mary Criner, the Petitioners, was not excluded from the record. They had their day in court, were permitted to take the stand at any time and to build up a voluminous and

lengthy record. Nothing was excluded from the record. So that this court might readily ascertain this fact by reading the entire record, counsel for Respondents refused to stipulate but insisted on the complete record being brought up. Respondents also desired that this court have the opportunity of reading all of the testimony of John Criner. Let us look for a moment at a portion of John Criner's testimony. Prior to the date Parham took the witness stand, the attorney for Respondents (Interveners in the lower state court) in cross examining John Criner, pointed out Parham and Smead Stuart in the court room and asked Criner if he was acquainted with them. John Criner replied that he had never seen either man and in effect he denied that they had ever been to his house (R. 48). Only a moment later, on redirect examination, Criner faintly remembered that two men had come to his house (R. 48). Yet the next day of the trial and after Parham and Stuart testified, Criner on redirect examination, remembered very clearly in minute detail the conversations that occurred on the two visits of Parham and Stuart, and further testified that Mary Criner, his wife, Fred Criner, his son, and Bertha Criner, his daughter-in-law, were present and heard every word of the conversation (R. 145). The family, of course, corroborated John Criner's testimony in nearly every respect (R. 146-150).

In the face of such glaring inconsistencies in the testimony of John Criner, and the statements in the next preceding paragraph hereof is only one example, it is obvious there is no merit in the contention that the judgments of the state courts were arbitrary and capricious in that the testimony of John H. and Mary E. Criner was not believed. Naturally very little credibility, if any, could be attached to the testimony of witnesses who demonstrated such a reckless disregard for the truth, and this was no doubt in the mind of the Chancellor when he said in the course of his decision

that "I am taking into consideration the appearance and demeanor of the witnesses on the stand, and all that has happened in this trial——" (R. 151). At the same time, it should be remembered that the state courts apparently believed a portion of the testimony of John and Mary Criner for they held that the Criners as against the Ritchie heirs, had acquired good limitation title to the land and one-half the minerals thereunder. This in itself is a sufficient answer to the contention that the decision of the state court was arbitrary and capricious and that the Criners were discriminated against because they are negroes. There was no discrimination. The judgments of the state courts were not arbitrary and capricious. However, the Ritchie heirs, the plaintiffs in the Ouachita Chancery Court, used this same contention in their argument to the Arkansas Supreme Court and it is possible they still feel that they were discriminated against.

In the state courts, this case involved no more than the question of whether V. S. Parham and his grantees were innocent purchasers for value so as to come within the protection of the recording statutes (Pope's Digest of Arkansas Section 1847) and the doctrine announced by the Arkansas Supreme Court in the case of *White* v. *Moffett* 108 Ark. 490, 158 S. W. 505. The Supreme Court of Arkansas held that V. S. Parham and his grantees were innocent purchasers and therefore, entitled to protection. No federal question was involved. The lower court, proceeding entirely upon principles of general and local law, and giving all parties interested in the question an opportunity to be heard, decided Petitioners had no right to the one-half interest in the oil, gas and royalty awarded to Respondents. As was said by this court in *Tracy* v. *Ginzberg*, 205 U. S. 170, 51 L. Ed. 755:

> "The decision of a state court, involving nothing more than the ownership of property, with all parties

in interest before it, can not be regarded by the unsuccessful party as a deprivation of property without due process of law, simply because its effect is to deny his claim to own such property".

Moreover, the contentions of Petitioners simply boil down to the claim that the decision of the Supreme Court of Arkansas is erroneous, and no constitutional provision is violated by an erroneous decision of a state court. The state courts have supreme power to interpret written and unwritten laws of the state and an erroneous decision of the highest state court does not confer appellate jurisdiction on the U. S. Supreme Court. *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill,* 281 U. S. 673, 74 L. ed. 1107; In the Matter of Eugene M. Converse 137 U. S. 624, 34 L. ed. 796; *Neblett* v. *Carpenter,* 305 U. S. 297, 83 L. ed. 183; *Chicago Life Ins. Co.* v. *Cherry,* 244 U. S. 25, 61 L. ed. 966; *Worchester County Trust Co.* v. *Riley,* 302 U. S. 292, 82 L. ed. 268; and *Bonner* v. *Gorman,* 213 U. S. 86, 53 L. ed. 709.

And finally we come to the point that the alleged federal question was not raised in time. Despite the fact that the Chancery Court held herein that Respondents were the owners of one-half of the oil, gas and mineral royalty, which holding was merely affirmed by the Arkansas Supreme Court, the record herein does not show that Petitioners claim that the holding of the Chancery Court presented any federal question or that they were denied any constitutional rights by its judgment. If the opinion of the Arkansas Supreme Court herein presents any federal question, obviously, the same questions were presented by the judgment by the Chancery Court. Yet, no attempt was made to inject any federal question in this case until the petition for rehearing was filed, which petition was promptly denied. It is well established that this court will not review the decision of a state Supreme Court when federal questions in a case are raised for the first time upon petition for rehearing to the

State Supreme Court. (*Rooker* v. *Fidelity Trust Co.*, 261 U. S. 114, 67 L. ed. 556; *Godchaux Co.* v. *Estopinal*, 251 U. S. 179, 64 L. ed. 213; and *McGarrity* v. *Bridge Comm.*, 292 U. S. 19, 78 L. ed. 1095). As was said by the court in *American Surety Co.* v. *Baldwin*, 287 U. S. 156, 77 L. ed. 231;

> This is not a case where, as in Saunders *v.* Shaw, 244 U. S. 317, 320, 61 L. ed. 1163, 1165, 37 S. Ct. 638, the federal claim arose from the unanticipated disposition of the case at the close of the proceedings in the state Supreme Court. Compare Ohio ex rel, Bryant *v.* Akron Metropolitan Park Dist. 281 U. S. 74, 79, 74, L. ed. 710, 715, 66 A.L.R. 1460, 50 S. Ct. 228. Nor is the federal claim based, as in Brinkerhoff-Faris Trust & Sav. Co. *v.* Hill, 281 U. S. 673, 74 L. ed. 1107, 1112, 50 S. Ct. 451, upon the unanticipated act of the state Supreme Court in giving to a statute a new construction which threatened rights under the Constitution. Compare Missouri ex rel. Missouri Ins. Co. *v.* Gehner, 281 U. S. 313, 320, 74 L. ed. 870, 875, 50 S. Ct. 326.

Conclusion

In final analysis, in the case at bar the Supreme Court of Arkansas merely held that V. S. Parham and his grantees, Respondents herein, were innocent purchasers for value and applied the Arkansas law applicable thereto, and, such being the case, it's decision is not subject to review by this court.

Respectfully submitted,

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